

Frequently Asked Questions - Appeals

Listed below are often asked questions and answers for claimants, employers, and the general public concerning the appeals process. Information about an [Appeal of Deputy Determination](#) and an [Appeal of Appeals Examiner's Decision](#) is provided.

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Appeal of Deputy Determination FAQ's

1. Who can file an appeal?

Claimants and employers who have received unfavorable deputy determinations have the right to appeal. Claimants dissatisfied with monetary determinations also have the right to appeal.

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2. How is an appeal filed?

All appeals must be in writing. There are three ways in which an appeal may be filed:

- In person. Appeals may be filed in person at the VEC local office in which the initial claim was filed. A local office representative will be glad to assist parties in filing appeals. Appeal forms are available in the local offices for parties filing in person. Appeals delivered by courier are considered as in person filings.
- By mail. Appeals may be filed by mailing a letter of appeal to the Clerk of the Commission, P.O. Box 1358, Richmond, VA 23218-1358.
- By fax. Appeals may be faxed to the Clerk of the Commission, FLA (804) 786-8492.
- Online. Visit the [Virginia Internet Appeals](#) [1] website.

All appeals should contain the name and social security number of the claimant and the reason(s) for the appeal. The reason(s) for the appeal do not have to be detailed but parties desiring to appeal must clearly indicate their intention to appeal.

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3. Who are parties to an appeal?

The parties to an appeal are the claimant, the claimant's last 30-day/240 hour employer and any subsequent employer for whom the claimant has worked before filing the claim.

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4. When must an appeal be filed?

All appeals must be filed within 30 days of the date the deputy's determination was mailed, unless the appeal period is extended. Each deputy's determination contains the final date on which an appeal can be filed.

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5. When can the thirty (30) day appeal period be extended?

The thirty (30) day appeal period can be extended if good cause can be shown for extending it. Generally, good cause to extend the appeal exists when the appeal was not timely filed due to conditions or circumstances beyond the control of the party desiring to appeal. The appeals examiner must decide whether good cause to extend the appeal period exists after a hearing has been conducted.

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6. When is an appeal considered to be filed?

For appeals filed by mail, the date of filing is the date of the postmark affixed by the United States Postal Service to the envelope in which the letter of appeal is sent. For all other methods of appeal, the date of filing is the date the appeal is received by the VEC.

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7. How are parties advised if an appeal has been filed?

If an appeal is filed, all parties to the case will be sent a Notice of Appeal. This notifies the appealing party that the appeal has been received and notifies other parties that an appeal has been filed. The Notice of Appeal indicates a hearing will be scheduled in the near future.

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8. What should be done when a Notice of Appeal is received?

Once notice is received, all parties should carefully read the information contained on both sides of the notice. Parties insure their respective interests will be represented at the hearing. This includes contacting witnesses and gathering documents and other evidence. Any party desiring to engage the services of an attorney or other representative should do so immediately upon receipt of the Notice of Appeal.

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9. Who can be a representative?

Any person of their choosing can represent a party. A representative does not have to be an attorney. If a claimant engages the services of an attorney, the Commission must approve the attorney's fee.

If a claimant desires to be represented by an attorney but lacks the resources to hire one, free legal services may be available through one of the legal aid offices in the state. The Virginia State Bar or the local bar association can provide information concerning free legal services which may be available. If an attorney or other representative is engaged to represent a party, the attorney or representative should contact the clerk's office immediately to ensure proper notice of future proceedings in the case.

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10. Will there be a hearing?

Yes, in all cases, unless an appeal is withdrawn or a procedural issue requires the case to be referred to the deputy for another determination.

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11. How are the parties notified of the hearing?

A Notice of Hearing will be mailed to all parties. The notice will contain the time, date and location of the hearing and the issues, which will be addressed at the hearing. The notice contains important information on both sides, which should be carefully read by all parties.

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12. What is the importance of the hearing?

The hearing is one of the most important aspects of the appeals process. In most cases it is the only opportunity for evidence to be placed into the official record. Testimony and other evidence available but not offered at the hearing will usually not be allowed or considered at a higher level of appeal. When parties fail to participate in a hearing, the appeals examiner deciding the case will issue a decision based upon the available evidence.

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13. What should the parties consider concerning witnesses?

Parties have the right to call witnesses on their behalf. Usually witnesses with first-hand knowledge should be called. This generally means eyewitnesses. Parties should be familiar with the substance of their witnesses' testimony before calling them to testify.

This means that once a certain fact has been established, additional witnesses whose testimony is merely repetitive, will usually not be allowed to testify, except in rebuttal. Witnesses will be subject to the questioning of the opposing party and the appeals examiner. Parties should contact their witnesses as soon as possible. If a key witness cannot be present for a hearing the party should contact the clerk's office immediately at (804) 786-3020 and request the hearing be postponed, rescheduled or request permission to allow the witness to participate by telephone.

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14. Can witnesses of documents be subpoenaed?

Parties desiring witnesses of documents to be subpoenaed should submit requests immediately to the clerk's office. Requests should be in writing but may be made by telephone. The request should include the claimants name and social security number and the name and address of the witness to be subpoenaed. It is important to include the city or county in Virginia where the witness can be served. In the case of documents, the name and address, including the city or county in Virginia, of the custodian of the documents should be provided. The party requesting the subpoena may be asked to demonstrate that: (1) the testimony of the witness of the evidence contained in the documents would be relevant to the appeal; (2) the evidence sought to be produced would not be merely cumulative; and (3) it would serve the interest of the party seeking the subpoena. The Commission may deny a subpoena request if these criteria are not met.

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15. What should be brought to the hearing?

Documents or other items of evidence may be extremely important to case. If the case involves in any way written rules, warnings, time cards, medical excuses or other documentation, it is very important to bring these documents to the hearing. There may be other items of evidence, which may be relevant. Parties wishing to introduce documents should bring sufficient copies for the opposing party and for the appeals examiner. All parties will be given an opportunity to review each item of evidence sought to be entered into the record and can make objections to their entry. The appeals examiner will decide if documents or other items of evidence are relevant to the issues in controversy and will either accept them into evidence or reject them.

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16. What is an affidavit?

An affidavit is a statement, which is sworn to before a notary public, and not merely a notarized statement.

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17. Can affidavits be used in lieu of witnesses' appearance?

Yes. However, they may not have as much weight as testimony under oath. It is preferable for the parties and witnesses, if necessary, to appear at the hearing to present the facts to the appeals examiner. If a party or witness is unable to attend, an affidavit may be submitted. The affidavit should set forth all facts, preferably in chronological order. Affidavits must be received in time to be considered at the hearing.

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18. What should parties expect at hearings?

Hearings are informal; however, all testimony is taken under oath and an official record is made of all testimony and exhibits introduced into evidence. An appeals examiner will preside over the hearing. The appeals examiner will insure all parties are granted a reasonable opportunity for a hearing. This means each party will be given the opportunity to present evidence, to subpoena and question witnesses, to review all documentation and exhibits offered into evidence and to make arguments on their behalf. The appeals examiner will assist unrepresentative parties in presenting their cases and testing the cases of the opposing parties. All parties, witnesses and representative parties are expected to be courteous and non-disruptive. The appeals examiner will insure each party is allowed to participate in an orderly manner. Individuals who become disruptive may be excluded from the hearing and prevented from further participation in the case.

Parties and their representatives/attorneys may be present throughout the entire hearing. Witnesses are excluded from the hearing except when providing testimony. Observers are permitted to attend the hearing with the agreement of all parties.

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19. Can a hearing be reopened?

A party who was unable to appear at a hearing or who appeared but wishes to present additional evidence, may request a reopening of the hearing, which will be granted if good cause is shown. Requests for reopening must be made in writing to the chief appeals examiner and must contain the specific reason(s) for the request.

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20. Can a hearing be postponed?

Postponements will only be granted for good cause where material and substantial harm may result. If a postponement must be requested, the Clerk of the Commission must be notified by telephone (804) 786-3020 IMMEDIATELY to decide if a postponement will be granted. If the request for postponement is denied, a decision will be issued on the basis of available evidence and will explain your further appeal rights. If you do not receive a response on your request for postponement, **YOU SHOULD PARTICIPATE IN THE HEARING.**

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21. When are telephone hearings allowed?

In most interstate cases, hearings are conducted by telephone; however, in most other cases hearings are conducted in person. Telephonic hearings may be permitted in intrastate cases with the agreement of the parties. Parties or witnesses who cannot appear in person because of a bona fide emergency or other compelling circumstance, may be allowed to participate by telephone, at the discretion of the Commission. Parties wishing to participate by telephone should make such requests to the clerk's office immediately.

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22. Can hearings be scheduled at specific times?

Special requests by parties regarding hearing times and dates will be given consideration; however, they may not be granted.

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23. Can evidence obtained at an appeals examiner's hearing be used in other legal proceedings?

Information provided to the Commission can be used only in proceedings arising from the Virginia Unemployment Compensation Act. Appeals hearings cannot be used for discovery or "fishing expeditions" for other legal proceedings.

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24. Are parties allowed to tape record their own hearings?

No. The appeals examiner makes the official recording of the hearing. Parties desiring to engage the services of a court reporter may do so, at their own expense.

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25. Are translators available?

Yes. Individuals requiring translators should notify the clerk's office immediately upon receipt of the Notice of Appeal.

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26. Is assistance available for visually or hearing impaired individuals or those with special requirements?

The Virginia Employment Commission is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. The number for the Telecommunications Device for the Deaf is (804) 371-8050. Parties, representatives, and witnesses who are hearing, visually, or mobility impaired or who have any other disability are requested to notify the clerk's office immediately to insure necessary arrangements are made for their participation.

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27. Can appeals examiner decisions be appealed?

Parties who receive adverse appeals examiner decisions have the right to appeal the decision to the Office of Commission Appeals. The appeal must be filed within 30 days of the day the decision was mailed. The final date for filing the appeal is stated on the face of the decision. All appealed decisions



must be made in writing to the Office of Commission Appeals, P.O. Box 1358, Richmond, VA, 23218-1358.

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Appeal of Appeals Examiner's Decision FAQ's

If you are in doubt about any of the information, please do not hesitate to contact the Office of Commission Appeals for further clarification at (804) 786-4140.

1. What is the next step after filing the appeal?

After filing an appeal from the appeals examiner's decision, a Notice of Appeal will be mailed to all parties along with the appeal itself. The Notice of Appeal is a means to advise the parties that an appeal has been filed and to provide additional information. Unless a hearing is requested in writing, the case will be assigned to a special examiner who will review all of the information previously submitted and make a decision. Please thoroughly read the Notice of Appeal that you received.

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2. When is my hearing?

Hearings are not automatically scheduled at the Commission level. A hearing before the Commission must be requested in writing. That request must be made within 14 days from the date the Notice of Appeal was mailed.

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3. How do I get a transcript?

A transcript of hearing is usually provided at no cost if there is a timely written request for a hearing.

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4. May I participate by telephone?

No. The Office of Commission Appeals does not conduct telephone hearings. All Commission level hearings are held at the central office in Richmond.

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5. The decision was reversed in my favor - when will I receive my check?

Please contact the local office where the claim was filed or Benefit/Charge Unit at (804) 786-6921.

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6. I need to request a postponement of the hearing. What should I do?

A postponement can only be granted by a special examiner and only after it has been shown that material and substantial harm may result from denying the request. A request for postponement must be made as soon as possible and should be made by telephone to the Office of Commission Appeals

(804) 786-4140

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7. What is the difference between a hearing for oral argument and a hearing for additional evidence?

At an oral argument hearing, you can explain why, based on the information previously submitted, the appeals examiner's decision should be changed or remain the same. You will not be allowed to present new evidence.

At a hearing for additional evidence, you will have the opportunity to present additional information that was not provided earlier. There may be limitations imposed by the special examiner who hears the case. If so, those limitations will usually be explained on the hearing notice or in a separate letter.

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8. Can you subpoena someone?

There are rare instances when subpoenas can be issued, but only if the Commission has decided to receive additional evidence in the case. Subpoenas should be requested by writing the Clerk of the Commission, Office of Commission Appeals, P.O. Box 1358, Richmond, VA 23218 or calling (804) 786-4140.

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9. What could happen if I don't pursue this appeal?

If a qualification for benefits is reversed on appeal, the claimant will be required to repay any benefits paid after the effective date of the disqualification. If a qualification for benefits is affirmed or if a disqualification is reversed, the last 30-day employer will usually incur charges to his experience rating account. A reimbursable employer will have to pay all or a portion of benefits actually paid to the claimant.

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